

CONTRACT
by and between
County of Cuyahoga, Ohio
and
ProviderGateway, Inc.

THIS AGREEMENT, dated as of _____ is made and entered into by and between County of Cuyahoga, Ohio (the "County") on behalf of the Department of Senior and Adult Services ("DSAS"), 1701 East 12th Street, Lower Level, Cleveland, Ohio 44114 and ProviderGateway, Inc., an Ohio corporation with offices located at 3700 Euclid Avenue, 2nd Floor, Cleveland, Ohio 44115 (the "Vendor").

WHEREAS, the Vendor's software maintenance services are available under existing State Term Schedule number 533132-1 (exp. 06/30/11); UNSPSC Codes: 43230000; 81112200; 81110000 and County desires to avail itself of such services of the Vendor and the Vendor is willing to provide such services to the County upon all the terms and conditions set forth in the State Term contract, as further supplemented herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, ProviderGateway, Inc. and the County agree as follows:

ARTICLE I - AGREEMENT AND TERM

1.1 Scope of Agreement. During the term of this contract, Vendor shall provide the County with all services necessary to maintain and host the Provider GATEWAY-LTC software, used by DSAS.

1.2 Term. The initial term of this contract shall commence as of February 1, 2011 through January 31, 2012; and, unless earlier terminated in accordance with the provisions of this contract, shall continue in effect for a period of twelve months from the commencement date.

ARTICLE II - SCOPE OF WORK

2.1 Rendering of Services. Vendor hereby agrees to render the services identified in Article 1.1 and the State Term Schedule, at a total price which shall in no event exceed the amount of **Fifty Three Thousand Six Hundred Dollars (\$53,600.00).**

2.2 Compliance with Digital Imaging and Electronic Record Standards. Vendor is aware that the system contemplated under this Agreement will be used to electronically store data previously stored on paper; and the Vendor represents and warrants that the proposed system will be secure, and will comply with all digital imaging and electronic records standards so that the admissibility of such records in all judicial, administrative and auditing proceedings will be preserved. The Vendor further expressly warrants that the proposed system will be in compliance with all Federal and State laws and regulations, including but not limited to, Health Insurance Portability and Accountability Act (HIPAA) of 1996, the Electronic Signatures in Global and National Commerce Act of 2000 (S.761); the U.S. Department of Health and Human Services Regulations contained in 21 CFR Part 11; the Ohio Electronic Records and Signatures Act of 2000 (Sub. H.B. 488) O.R.C. §1306.01 et seq.; Ohio Supt. Rules 26 and 27, and the relevant digital record requirements of the Ohio Rules of Evidence.

2.3 Software Maintenance. During the maintenance period, the Vendor will correct any material programming errors that are attributable to Vendor within a reasonable period of time, provided that DSAS notifies the Vendor, either orally or in writing, of a problem with the Software and provides sufficient information for Vendor to identify the problem. The Vendor's response to a programming error will depend upon the severity of the problem. In the case of programming errors that slow the processing of data by a small degree, render minor and non-critical functions of the system inoperable or unstable, or require users or administrators to employ a workaround to fully use the software, the Vendor will respond to the request for resolution within four (4) business hours and begin working on a proper solution within one (1) business day, dedicating the resources of one (1) qualified programmer fulltime to fixing of the problem. In the case of any defects with more significantly slow processing of data, the Vendor will respond within two (2) business hours of notification and dedicate all available resources to resolving the problem.

2.4 Maintenance Responsibilities. The Vendor will furnish the following services under the terms and conditions of this contract, during the maintenance period February 1, 2011 through January 31, 2012 for an annual fee of \$27,200.00 as outlined in Attachment A (Maintenance Fees):

- A. The Vendor will provide maintenance services to Cuyahoga County Long Term Care, ProviderGateway Web Based Software Application.
- B. The Vendor will provide technical telephone consultation concerning the use of any updates, enhancements and corrections to all sites as outlined in Attachment A (Maintenance Services).
- C. New Releases. From time-to-time the Vendor may modify or enhance the software by a new release of the software. In such case, the Vendor shall provide DSAS one copy of every new release of the software to be deposited into software escrow by the Vendor listed in the attached schedules, including all modifications, enhancements and documentation.
- D. The Vendor will correct errors or replace the software in an expeditious manner after notification that a software correction is required in accordance with 2.3. Failure to comply with this requirement will result in a deduction from the maintenance rate for each day the software is inoperative, computed from the initial downtime notification. The deduction for an inoperative period consisting of a partial day (between the hours of 7:00 am til 5:00 pm) will be prorated at a rate of \$72.00 per day.
- E. The Vendor will provide maintenance for the then current release and the immediately preceding release of the software. The Vendor will provide maintenance support for the immediately preceding release for at least six months after a new version is released. After this period the Vendor may cancel the Maintenance Services for the immediately preceding release of the software on sixty (60) days written notice.

2.5 Period of Maintenance. Maintenance will be available nine (9) working hours per weekday, between 8:30 a.m. and 5:30 p.m. Eastern Standard Time. Travel time and expenses related to remedial and preventive maintenance will not be billable but will be included in the Vendor's firm, fixed annual maintenance fee during later annual maintenance periods.

2.6 Maintenance Access The Vendor will keep the software and hardware in good operating condition during the warranty period and any annual maintenance period during which DSAS contracts for continued maintenance. All maintenance that requires the software or hardware to be inoperable must be performed outside DSAS' customary working hours except when the software or hardware is already inoperable, preventative or scheduled maintenance will be performed at mutually agreeable times, within the parameters of the manufacturer's published schedule.

2.7 Hosting. The Vendor will host the Long Term Care application during the maintenance period February 1, 2011 through January 31, 2012 for Cuyahoga County on behalf of DSAS at the standard fee of **\$26,400.00 per year** in the **not-to-exceed total amount of \$26,400.00** as outlined in Attachment B (Cost Schedule):

Hosting will include, but is not limited to the following major tasks:

- Live application hosting state-of-the-art hosting center connecting to global high speed fiber optic network utilizing a nationwide 24-gigabit (OC-48) IP-routed network and 10 gigabit(OC-192c) backbone.
- Hardware and Management including Hardware Servers, Routers, IP, and Firewall Management
- Software Management (SQL, MS Operating Systems, Backup Software, Network Monitoring Software, Anti-Virus and Intruder Detection Software, Development and Programming Software).
- 24/7 Application Access, monitoring and Management
- 24/7 on-site Technical Personnel
- 24/7 on-site security
- Biometric access screening.
- Climate Controlled (Temperature/Humidity).
- Application Database Management and Storage
- Disaster Recovery (Data Restoration and preventive systems including fire and water detection systems)

2.8 Network Monitoring

The Vendor will monitor Long Term Care application on a continuous basis including the following activities:

- Client systems and applications are monitored through the Vendor's 24x7 Network Operations Center (NOC). When events occur, trouble tickets are automatically generated; operations are notified and prescribed procedures followed to restore systems to their normal state. Monitoring will include:
 - System availability status
 - System capacity and performance monitoring will include:
 - CPU performance
 - Memory utilization
 - Disk capacity
 - NIC throughput
 - Database and application monitoring included for MS SQL Database:
 - Performance
 - Table-space
 - Database capacity
 - Transaction throughput and queuing

- Web site availability monitoring
- Monitoring of application (URL) availability and response times

Network monitor history logs will be utilized to compute downtime statistics

2.9 Software/Hardware Upgrades

The Vendor will install, maintain, and upgrade all required software and hardware products.

The system will be unavailable during weekly maintenance windows. When it is necessary to perform emergency maintenance, the Vendor will give DSAS as much notice as possible, and will limit the duration of the downtime.

The Vendor will grow the processing, data storage, and memory of the servers as necessary to meet the needs of the Clients. The Vendor has sized the PG Long Term Care application installation to meet the projected needs of the client.

2.10 Connectivity

The Vendor will supply sufficient bandwidth (2 4-gigabit (OC-48) IP-routed network and 10 gigabit (OC-192c) backbone to support the network traffic created by the PG Long Term Care Application. It is suggested that Cuyahoga County DSAS users utilize equivalent of a dedicated T-1 or faster Internet connection and participating Long Term Care facilities utilize high speed business connectivity such as DSL or Cable for individual users.

2.11 Backups

The Vendor will provide the following backup services:

- Daily tape backup (Mon-Fri) on a two-week cycle
- File system backup of all files on the servers
- Database backup
- Off-site storage of backup tapes
- Restoration of files
- Purchase tapes required to support the backup rotation scheme

The Vendor will provide backups of data consistent with the Vendor's data backup policies.

Restoration of archived data from backup tapes will be negotiated between DSAS and the Vendor as needed. The Vendor will take every reasonable precaution to ensure backups are available to DSAS; however, the Vendor does not warrant or guarantee data and accepts no liability for loss of data due to hardware failure or natural disaster.

Cold backups are taken as needed when the server is down, before major hardware and database updates.

The Vendor's offsite storage procedures include the following: Information Services will maintain two complete sets of the backup data, with one set to be kept onsite for normal data recovery, and one set to be kept offsite, at a secure location, for disaster recovery purposes. The offsite copy of the backup data will be taken offsite on a weekly basis via courier service. The offsite storage location will be approximately 15 miles from the onsite storage location. A copy of all disaster recovery plans and media will be kept at the offsite storage location as well.

2.12 Contingency and Disaster Recovery

A centralized automated data protection system is used for the backup and recovery of data and applications. All modified data are backed up every night. Backup tapes are rotated to offsite storage for disaster recovery purposes. The Vendor utilizes RAID 5 Disk configured with Hot Spare for redundancy. The hardware Vendor will supply parts within one business day for hardware replacement, if required. Two independent Internet connections are maintained. Normally in load balancing mode, the connections will rollover in the event that one connection goes down.

2.13 Environmental Service

The Vendor supplies the required facilities, cabinet, monitors, power and airconditioning. Power will be provided from the MSDC Liebert UPS with diesel generator backup, should commercial power fail. Two separate 30-Ampere circuits will be provided within the cabinet.

2.14 Telecommunications (Network Infrastructure) Services

The Vendor will supply a dedicated secure network. This network will be implemented using redundant Cisco Ethernet switches and Cisco PIX firewalls. The Vendor provides Internet access from their data center. The Vendor has included 2mbps internet access as part of the pricing. The Vendor will provide load balancing of Web/Front-end servers, using its redundant pair load balancers for the production systems.

Network Services

The following network services will be provided:

- Multi-location DNS and administration
- IP addressing and provisioning
- Internet bandwidth
- Administration, including updates as required, for data center switches and routers

The Vendor will provide the necessary network switches and firewalls to connect this infrastructure in its center.

2.15 Managed Services Data Center

Data traffic within the PG Long Term Care application will utilize a similar configuration outlined below:

- Load-balanced redundant Liebert Uninterruptible Power Supplies (UPS)
- Backup diesel generator (300 KW, 3 day fuel supply, re-supply contract)
- Two 30 Ampere circuits in each equipment cabinet
- Pre-action sprinkler system and FM 200 fire suppression system
- Climate control through redundant Liebert multi-stage air handling units
- Diverse routed fiber through two Verizon Central Offices (48 strands)
- Multiple T3 lines (45Mbps) to the Internet via UUNET and Sprint
- Network Operations Center (NOC) staffed 24/7
- Perimeter security system monitored by ADI and Certified Protection
- Internal security includes employee background checks and biometrics

2.16 Help Desk

DSAS is expected to provide first tier help desk support for local users. This will include assistance with log ins, passwords, accessing specific courses and materials within specific

courses. The Vendor will provide second tier help on request from the Institution Administrator. This help will generally be available between the hours of 8:00 am and 5:00 pm, Monday through Friday.

Service Levels and Coverage

The Vendor is committed to providing the following:

- *Availability*, Metric target > or =99.9%
- 24/7 proactive monitoring and management support
- 24/7 access to Vendor facilities for individuals designated by client
- 24/7 operational services
- Service request, problem logging reporting

ARTICLE III - PAYMENT AND INVOICING

3.1 Payment. During the term of this Contract, DSAS shall pay the Vendor for the services rendered to Cuyahoga County at the rate(s) set by the State Term Schedule number 533132-1.

3.2 Invoicing. Vendor shall invoice DSAS for services rendered within 30 days of the end-of-the-month to the following address:

Cuyahoga County Department of Senior and Adult Services
Financial Services Unit
Attn: Angela Ferrell, Fiscal Administrator
1701 E 12th Street, Lower Level
Cleveland, Ohio 44114

This provision is in lieu of the clause titled "INVOICE REQUIREMENTS" in the State contract.

3.3 Record Audit Retention. The Vendor agrees to make all pertinent contractual books and records and other documents pertaining to this contract available to DSAS and its designated agents for purpose of audit and examination upon reasonable request during the term of this contract and for a period of two (2) years from the expiration date or final payment under this contract, whichever is later; provided however, that should the Vendor be notified that an audit has been commenced pursuant to Ohio Revised Code §117.11 during said period, for which the aforesaid books and records are material, the aforesaid records shall be retained pending the completion of said audit.

ARTICLE IV - INDEMNITIES AND WARRANTIES

4.1 Indemnities and Warranties. All provisions relating to indemnities and warranties contained in the State Term Schedule contract shall inure to the benefit of the County.

ARTICLE V - SOFTWARE AND OWNERSHIP RIGHTS

5.1 Title to Software. Except to the extent otherwise expressly provided in the State Term Schedule number 533132-1, all source code, documentation, and other software artifacts developed by the Vendor pursuant to this contract, shall be considered as a work made for hire, and is and shall remain the property of the County. The County hereby grants the Vendor a royalty free perpetual license to copy, use, sub-license and modify the Software. A copy of all software developed shall be provided in a decrypted, open and modifiable format, together with any proprietary compiler used to translate the source code to machine code if the County does not already have the compiler.

Should any pre-existing, proprietary software be used in the software system covered

hereunder, then Vendor will grant the County a nonexclusive, royalty-free perpetual license to use and modify the software; and copies of the source code shall be provided to the County or placed in escrow

5.2 Confidentiality of Data The Vendor must secure prior approval from the County for any and all additional licenses requested by 3rd parties to access programs licensed to the County. All data and other records, including data and records of the State of Ohio ("State") clients entered into any database, files, and data stores of the County or other agencies of the State or supplied to the Vendor by the County or the State are and shall remain the sole property of the County and the State. The Vendor shall not, without the County's written consent, copy or use such records except to carry out contracted work, and will not transfer such records to any other party not involved in the performance of this contract. All data dictionaries, entity relationships, database configurations, encryption passwords, forms, automated reports, or other artifacts used to access the data shall belong to the Vendor and shall be treated as a trade secret of the Vendor.

ARTICLE VI - CHANGE ORDERS AND APPROVAL PROCESS

6.1 Change Order Any change order or amendment requiring, or necessitating, an increase beyond the not to exceed price limit listed in section 2.1 of this contract shall require the approval of the County. The Vendor will not perform tasks outside the State Term Schedule unless it is with prior written approval of the County and in accordance with this clause.

ARTICLE VII - DISPUTE RESOLUTION AND TERMINATION

7.1 Dispute Resolution

a) In the event of any dispute or disagreement between the Vendor and DSAS, either with respect to the interpretation of any provision of this contract or with respect to the performance by the Vendor or the County hereunder, which cannot be resolved in the normal course of business, then upon written notice of either party, each party will appoint a designated officer whose task it will be to meet for the purpose of endeavoring in good faith to resolve such dispute or to negotiate for an adjustment to such section or provision of this contract. The designated officers shall meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. Such officers will discuss the problem and/or negotiate the applicable section or provision without the necessity of any formal proceedings relating thereto. During the course of such negotiation, all reasonable requests made by one party to the other for information will be honored in order that each of the parties may be fully advised in the negotiations. The specific format for such discussions will be left to the discretion of the designated officers but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other party. No formal proceedings for the binding arbitration of such dispute may be commenced until (i) resolution as contemplated in this clause has been unsuccessful and (ii) either of the parties concludes in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely and so notifies the other party.

(b) The rights and obligations of the parties under this provision shall not limit either party's right to terminate this contract as may be otherwise permitted hereunder.

7.2 Termination for Default Either party may terminate this contract, in whole or in part, whenever such party determines that the other has failed satisfactorily to fulfill its obligations and responsibilities hereunder and is unable to cure such failure within a reasonable period of time, not to exceed thirty (30) calendar days or such longer period of time as may be specified in writing by the terminating party, taking into consideration the gravity and nature of the default.

Such termination shall be referred to as "Termination for Default" Upon determination by either party hereto that the other has failed to satisfactorily perform its obligations and responsibilities hereunder, the party seeking termination shall notify the defaulting party in writing of the failure and of the time period that has been established to cure such failure, which time period shall be not less than ten (10) days. If the defaulting party is unable to cure the failure within the specified time period, the party seeking to terminate may, by giving written notice thereof to the defaulting party, terminate this contract, in full or in part, as of the date specified in the notice of termination. The Vendor however, shall be paid for services completed consistent with the status of project deliverables and/or materials provided on or prior to the date of termination on a quantum meruit basis. The County shall be entitled to a prorated reimbursement for any services paid for but not rendered.

7.3 Termination for Financial Instability In the event that the Vendor becomes financially unstable or insolvent to the point of (i) ceasing to conduct business in the normal course, (ii) making a general assignment for the benefit of creditors, or (iii) suffering or permitting the appointment of a receiver for its business or its assets, or there is a filing by or against the Vendor of a meritorious petition in bankruptcy under any bankruptcy or debtor's law, the DSAS may, at its option, immediately terminate this Contract under Section 7.2, the "Termination for Default" clause, by giving written notice thereof.

ARTICLE VIII - ESCROW

8.1 Deposit of Escrow Items

(a) The term "Escrow items" as used in this article means the following:

1. **Source Code** — all the compilable programming language source code version of the licensed system, including the software, all corrections, upgrades, updates, modifications thereof as they are available, on disk or magnetic tape media in ASCII format.

(b) The Vendor agrees to deposit with an Escrow Agent a single copy of the source code for certain software programs ("source code") that have been licensed to the County on behalf of DSAS pursuant to this agreement. The Vendor shall deposit the most current version of the Licensed Software necessary for the maintenance of the licensed programs by the County upon release of the source code pursuant to this contract. The copy of the source code held by an Escrow Agent shall be and remain the exclusive property of the Vendor and Escrow Agent will hold the source code as specifically provided in this contract.

8.2 Escrow Payments and Fees The Vendor shall be responsible for the establishment of an account and for making such payments to an Escrow Agent for the term of this agreement. The Vendor shall reimburse the Escrow Agent for all out of pocket costs in connection with its performance of services hereunder, including without limitation the cost of media, copies, delivery charges, shipping, handling and insurance.

8.3 License Grant For Use Of Source Code The Vendor grants the County and assigns, an irrevocable, nonexclusive, paid-up right and license to use, execute, reproduce, display, perform, maintain, support, upgrade and modify the Deposit, and distribute the same internally, and to prepare derivative works based on the Deposit, exclusively for the operation of DSAS following the occurrence of an Event of Default. Cuyahoga County may engage the services of third parties to enable access to the benefits of the license granted herein. The provisions of the Section 8.2 shall survive the termination of this contract following the occurrence of an Event of Default.

ARTICLE IX - MISCELLANEOUS

9.1 Schedules Incorporated by Reference. The following Schedules are attached hereto and are incorporated by reference herein as if fully rewritten herein:

Exhibit A: Maintenance Agreement – Attachment A

Exhibit B: Cost Schedule – Attachment B

Exhibit C: State Term Schedule Information Sheet

Exhibit D: State Term Schedule

[9.2 through 9.3 intentionally omitted]

9.4 Notices. Wherever one party is required or permitted to give notice to the other pursuant to this contract, such notice shall be deemed given when delivered by hand, via certified mail with return receipt requested, via overnight courier with signature required, and addressed as follows:

In the case of the County:

Cuyahoga County Department of Senior and Adult Services
ATTN: David Dombrosky, Deputy Director
1701 E. 12th Street, Lower Level
Cleveland, Ohio 44114

In the case of the Vendor:

ProviderGateway, Inc
Attn: Demo Solaru
3700 Euclid Avenue
2nd Floor
Cleveland, Ohio 44115

This provision supplements the clause titled "FUTURE NOTICES" in the State contract, when dealing matters relating to purchases by the County. Either party may from time to time change its designated recipient or address for notification purposes by giving the other party written notice of the new designated recipient or address and the date upon which it will become effective.

[9.5 through 9.8 intentionally omitted]

9.9 Governing Law. This contract shall be subject to interpretation under the laws of the State of Ohio, and is subject to the review of County Prosecutor's Office as to legal form and correctness. Venue in any action brought under this contract shall be in Cuyahoga County. This provision is in lieu of the clause titled "LAW" in the State Term Schedule Contract.

9.10 Security Standards. The Vendor must agree to maintain security standards consistent with the security of the Cuyahoga County Information Services Center. These include strict control of access to data and maintaining confidentiality gained while carrying out its duties. The Vendor agrees to consider all knowledge gained from access to Information Services Center applications, systems and programs as proprietary information supplied in the strictest confidence and shall release it only to authorized employees/agents requiring such information, shall not release or disclose it to any other party or use it for manufacture or any other purposes except as required under this contract, without the expressed written approval of the County. The term "confidential information" shall mean any device, process, method or technique originated by or

peculiarly within the knowledge of the County and its representatives, employees, and those in privity with it, which is not available to the public and is subject to protection as property under recognized principles

[9 11 through 9 23 intentionally omitted]

9.24 Commencement of Contract Performance. In order to protect the interest of the County this contract must be executed by the County before compensation for the services or products set forth in this contract can be provided. In the event that services are provided by the Vendor prior to the execution of this agreement by the County, the same will be provided at the Vendor's risk, and payment therefore can not, and will not, be made unless and until this agreement is approved by the County. Upon approval by the County of this contract, however, any and all prior performance under this contract shall be deemed ratified and said performance shall be deemed to be included in this contract. Payment(s) for said prior performance shall not increase the amount of the contract limit.

9.25 Priority of Provisions. All terms of the State Term contract or any Federal GSA Supply Schedule contract, upon which this contract is based, shall remain in full force and effect except to the extent expressly modified herein. In interpreting and applying provisions of the State Term contract or Federal GSA contract, the term "County" shall be substituted for "State" or Federal Government whenever the State Term contract or Federal GSA contract intends to confer a benefit upon the State or Federal Government. To the extent the State Term contract or Federal GSA contract are not modified herein, they are incorporated herein as if fully rewritten.

In resolving conflicts between this contract, the State Term contract or Federal GSA contract, the provisions of this contract and its schedules shall prevail over any conflicting State Term contract provision and its schedules; and, the State Term contract and its schedules shall prevail over any conflicting Federal GSA contract or schedules.

9.26 Electronic Transactions: By entering into this contract, I agree on behalf of the contracting or submitting business entity, its officers, employees, subcontractors, subgrantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by the County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. I also agree on behalf of the aforementioned entities and persons, to be bound by the provisions of chapters 304 and 1306 of the Ohio Revised Code as they pertain to electronic transactions, and to comply with the electronic transactions, and to comply with the electronic signature policy of Cuyahoga County.

IN WITNESS WHEREOF, the County and the Vendor have each caused this contract to be signed and delivered by its duly authorized representatives as of the date first written above.

County of Cuyahoga, Ohio

Provider Gateway, Inc.

~~Cuyahoga County, Ohio~~

By: 

By: 

Edward Fitzgerald, County Executive

Adam O. Solman

MAINTENANCE AGREEMENT